



22 03 2019

Dr Sean Turner  
Acting Committee Secretary  
Senate Legal and Constitutional Affairs References Committee  
Parliament House  
Canberra ACT 2600

Dear Dr Turner

Thank you for providing Westpac with the opportunity to respond to six submissions containing adverse reflections on the Westpac Group (which includes Bank of Melbourne and St. George Bank). These submissions have been made by our customers to the Committee's inquiry into the resolution of disputes with financial services providers within the justice system.

We have kept our responses at a high level to provide the Committee with some overarching context on each of the submissions. If it would be helpful to the Committee, we would be pleased to provide further detail or information on request, including on our internal dispute resolution processes which are designed to resolve disputes quickly and fairly. For Westpac, it is critical to approach all our customer disputes fairly and responsibly, acknowledging the significant impact that mistakes and missteps can have on the wellbeing of our customers, particularly those who are vulnerable, and the importance of putting things right when we get it wrong.

With respect to the Committee's inquiry, it is our view that our internal dispute resolution processes, including our Customer Advocate, along with the Australian Financial Complaints Authority (AFCA) (and its predecessor external dispute resolution schemes) deliver affordable and appropriate avenues for customers to access justice. These are our primary avenues for resolving customer disputes. From time to time, a customer may commence legal proceedings against Westpac as the customer has not been satisfied with the outcomes from the internal and external dispute resolution mechanisms available. There are some of these examples in the submissions. There are some circumstances in which it is appropriate for Westpac to commence legal proceedings, however, when we do so:

- it is a last resort, usually after other attempts to work with the customer (and often over extended periods of time) have failed to result in a mutually acceptable outcome; and
- we acknowledge the importance for us to do the right thing by our customers in the litigation process, to act with integrity and we endeavour to uphold standards which will be familiar to those aware of the Attorney General's 'model litigant' guidelines for Commonwealth Agencies.



Mr Jonathon Haynes

- There were a number of proceedings related to Mr Haynes' complaint and concerns. Mr Haynes made a complaint to the Financial Ombudsman Service (FOS) and FOS decided in Westpac's favour. Westpac later commenced formal recovery action<sup>1</sup> for possession of his mortgaged property, which then became a debt claim for the money owed after the sale of the property. Mr Haynes made a separate claim in the Supreme Court against Westpac where he alleged that our employee who assessed his ability to repay his loans was fraudulent. Mr Haynes' claims and appeals were unsuccessful.<sup>2</sup> When considering Mr Haynes' claim, the Supreme Court found that Westpac did not augment income figures provided in Mr Haynes' loan application without his knowledge or consent.
- Westpac has acknowledged to Ms Ward potential irregularities in the taking of her guarantee and did not rely on the guarantee. We released Ms Ward from her obligations under the guarantee in 2014. Westpac also considered Ms Ward's claims for any losses she may have suffered as a result of believing that she may have been bound by the guarantee and we determined no financial loss had been established.

Mr Bruce Duncan

- Between 2011 and 2018, Westpac sought to resolve the matter without Court proceedings by extending periods of forbearance. During this seven-year period, Westpac investigated the Duncans' concerns and proposed negotiations to resolve the matter (with the primary goal of avoiding the need for Court action).
- The Duncans' claims about their loan application were investigated by Westpac, the FOS and the Westpac Customer Advocate. During these internal and external dispute resolution processes, Westpac was not made aware of Westpac conduct which would prevent the enforcing of the securities.
- Engagement continued with the Duncans after the FOS process to resolve the matter as quickly as possible. That included providing forbearance, attending a mediation (at which Westpac paid for the Duncans' legal representation and the mediator's fees). Westpac's Customer Advocate then met with the Duncans (who were represented at the time) to further attempt to resolve the dispute.
- The Duncans ultimately entered into a Settlement Deed with Westpac and were given an opportunity to obtain independent legal advice before the settlement was agreed. As part of our desire to achieve the right outcome, Westpac did not enforce its mortgage against the security properties nor did it seek to recover the whole of its debt from the Duncans.

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<sup>1</sup> in the Supreme Court of South Australia

<sup>2</sup> *Westpac Banking Corporation v Haynes*; *Haynes v St George Bank a division of Westpac Banking Corporation* [2017] SASC 23 (2 March 17); *Haynes v St George Bank a division of Westpac Banking Corporation*; *Westpac Banking Corporation v Haynes* [2018] SASFC 51; 2018 HCASL 348



#### Ms Lena Anderson

- As explained by Ms Anderson in her submission, this dispute related to payments Bank of Melbourne made to a third party from her mortgage account in 2014. As mortgagee, Bank of Melbourne considered it was obliged to pay amounts outstanding to Ms Anderson's owners' corporation pursuant to the Owners Corporation Act 2006 (VIC). If these payments had not been made, the owners' corporation could have executed a warrant to seize and sell the property she had given as security for this mortgage.
- Bank of Melbourne acknowledges that it should have communicated better with Ms Anderson before making those payments, and we subsequently reversed the relevant charges from Ms Anderson's mortgage account in 2015. We have tried to resolve this matter on a commercial basis throughout this dispute, including before any proceedings commenced, and remain open to working with Ms Anderson to reach a resolution.
- The dispute was the subject of proceedings in the Victorian County Court and, on 1 November 2017, the Court decided in Westpac's favour<sup>3</sup> Ms Anderson appealed to the Court of Appeal but was unsuccessful.<sup>4</sup> Ms Anderson then also unsuccessfully applied to the High Court for special leave to appeal.<sup>5</sup>
- The Courts did not find that Westpac engaged in unlawful conduct, amoral conduct or theft (and Westpac denies these allegations). Westpac has not tried to take advantage of the fact that Ms Anderson was not able to afford legal representation and notes that Ms Anderson was legally represented at various stages of the court proceeding and, where she was self-represented, Westpac's approach was to deal with her fairly and appropriately.

#### JMA Parties

- The dispute relates to loans St. George (now a division of Westpac) advanced to Jenolan Caves Resort Pty Limited (the company), which leased land from the NSW Government to operate Jenolan Caves House. Mr Field was the sole director of the company and guaranteed the loans, which included an advance of \$5.88 million which was made to the company in May 2004.
- The company began defaulting on payments in about 2005. Westpac appointed receivers to the company in December 2005 to attempt to recover its debt. The receivers transferred the lease and assets of the company back to the NSW Government. Mr Field alleged defaults by the NSW Government in relation to the provision of the services to the hotel and transfer back of the company assets to the NSW Government. Mr Field commenced or was involved in a number of

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<sup>3</sup>Westpac v Anderson [2017] VCC 1519

<sup>4</sup>Anderson v Westpac Banking Corporation [2018] VSCA 226

<sup>5</sup>Anderson v Westpac Banking Corporation [2018] HCASL 366



civil matters related to this issue in the Courts from 2007 to 2010, which included proceedings against St.George and other parties.

- The matters raised by Mr Field directly since 2006 or by the JMA Parties have, through Mr Field, received full and detailed responses from us in correspondence, discussions and proceedings. Westpac at all times acted honestly, and in an early proceeding, the Court described the way in which we responded to Mr Field's correspondence sent to our officers in 2006 as "temperate and professional" and as indicating "its tolerance, patience and restraint".

#### Mr Nicholas Wright

Mr Wright makes a number of statements, including that Westpac, Westpac's Chairman and Customer Advocate engaged in misconduct in:

- interfering in a police investigation
- engaging in misleading and deceptive correspondence
- breaching the Competition and Consumer Act 2010
- providing a forged document; and
- leveraging a bankruptcy threat against Dr Xabregas.

Westpac treats these allegations very seriously and does not accept them. Following internal and external dispute resolution processes, this dispute has been settled by way of a Settlement Deed where all parties obtained legal advice prior to entry into the Deed. Westpac believes it was reasonable that Ms Marcos, who was Dr Xabregas' attorney and who was involved in the discussions and settlement, be a party to the Deed or a non-disclosure agreement. The Deed does not prevent the parties from making whatever disclosures they considered appropriate to external dispute resolution schemes, regulatory bodies or the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

We don't propose to comment further on Mr Wright's submissions other than to state that Westpac has not engaged in criminal, or any other inappropriate behaviour, in relation to any police investigation or its conduct of the dispute with Dr Xabregas and her representatives.

#### Mr Colin Uebergang

Mr Uebergang has stated that the behaviour of Westpac and a receiver in the early 1990s constituted a number of criminal actions. Each of these allegations was raised in some detail with Westpac by Mr Uebergang and his advisors in 2018.

Westpac's Customer Advocate reviewed this dispute in 2018 and early this year, and has engaged in extensive correspondence with Mr Uebergang and his advisors. Westpac has also reviewed the material it still holds from the 1990s.

It is Westpac's view that its actions and the actions of the Receivers were lawful and appropriate and it has not received or seen any evidence to support Mr Uebergang's claims.



In an effort to resolve the claims, we are meeting with Mr Uebergang next week in a further attempt to understand and acknowledge his concerns and perspective.

Thank you again for the opportunity to address the issues raised in these six submissions.

Yours sincerely,

Michael ChouEIFate  
Group Head of Government and Industry Affairs

